MOTION FILED

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No. 04-1283

IN THE

Supreme Court of the United States

KIMBERLYE FINCH,

Petitioner,

v.

EDDIE LEE GALAWAY, Administrator,
on behalf of Estate of Bradford Wayne Galaway,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER AND BRIEF OF AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AND LATE FILING

Amicus moves the Court to grant it leave to file late its motion for leave and brief. *Amicus* brief was due on April 25, 2005. Although *amicus* was a party to the lower court who filed the interpleader action and an *amicus* at the Fifth Circuit, *amicus* was never served or received notice that petitioner Kimberlye Finch filed petition for writ of *certiorari*. Counsel for *amicus* made numerous attempts to contact counsel for Kimberlye Finch about the filing of his brief, but received no response until it was too late to file a timely response.

Pursuant to Rule 37.2 of the Rules of this Court, *Amicus Curiae* The Guardian Life Insurance Company of America ("Guardian") hereby moves for leave to file a brief *amicus curiae* in support of the petition for a writ of *certiorari* filed by Kimberlye Finch.*

As more fully explained in the accompanying brief, *amicus curiae* Guardian issued a group insurance policy to Bradford Wayne Galaway's employer, which provided Bradford Wayne Galaway with basic life insurance and accidental death benefits. The policy constituted an insured employee welfare benefit plan governed by Title I of the Employee Retirement Income Security Act of 1974 § 3(21)(A), 29 U.S.C. § 1002 ("ERISA").

Bradford Wayne Galaway named his then spouse, Kimberlye Finch, as the beneficiary to the policy. On or about June 20, 2002, Bradford Wayne Galaway and Kimberlye Finch were divorced. The divorce decree divested Kimberlye Finch of all rights, title, interest, and claims in and of all policies of life insurance insuring Bradford Wayne Galaway's life.

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* Petitioner Kimberlye Finch consented to the submission of the accompanying brief. Eddie Lee Galaway declined to extend his unconditional consent to the filing of the accompanying brief.

On November 8, 2002, Bradford Wayne Galaway was killed in an airplane accident. He died intestate and had not changed the named beneficiary on the life insurance policy prior to his death. Kimberlye Finch, the named beneficiary, and Eddie Lee Galaway, the administrator of Bradford Wayne Galaway's estate, both claimed sole entitlement to the insurance proceeds.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, Dallas Division to resolve the competing claims to the proceeds. Subsequently, Eddie Lee Galaway and Kimberlye Finch filed competing motions for summary judgment seeking the benefits under the plan.

The District Court granted summary judgment in favor of Eddie Lee Galaway based on the Fifth Circuit's precedent of applying the federal common law to the facts of the case. The appellate court affirmed. In reaching its decision, the appellate court held that Kimberlye Finch "explicitly, voluntarily and in good faith" waived her beneficiary status in the policy, rather than deciding the case based on the policy's named beneficiary as the United States Supreme Court recently did in *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). However, no guidance was provided by the appellate court on what constitutes an "explicit, voluntarily and good faith relinquishment."

The Fifth Circuit's holding continues to deepen the conflict among the circuits and burdens the administration of ERISA plans in light of this Court's decision in *Egelhoff*. As such, review of the lower court decision is warranted.

The petition filed by Kimeberlye Finch provides a compelling basis for granting a writ of *certiorari*. The accompanying brief will assist the Court in determining whether to grant *certiorari* because (1) *amicus* can

more broadly inform this Court of the uncertainty and burdens engendered by the lower court's decision; (2) the accompanying brief addresses additional points to provide substantial support on the burdens of companies who administer ERISA plans; and (3) *amicus* discusses at length the federal common law and the confusion among the courts on what constitutes an "explicit, voluntarily and good faith relinquishment" of benefits.

Accordingly, *amicus* respectfully requests that the Court grant leave to file the accompanying brief *amicus curiae.*

Respectfully submitted,

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BRIEF OF THE *AMICUS CURIAE*

Amicus Curiae The Guardian Life Insurance Company of America ("Guardian") submits this brief in support of the petition filed by Kimberlye Finch for writ of *certiorari* to the United States Court of Appeals for the Fifth Circuit.[1]

STATEMENT OF INTEREST

Guardian provides this disclosure of its interest. Guardian is a mutual life insurance company organized and incorporated under the laws of the State of New York, having its principal place of business located at 7 Hanover Square, New York, New York 10004. Guardian initiated this lawsuit by interpleading the funds of a life insurance policy governed by Title I of the Employee Retirement Income Security Act of 1974 § 3(21)(A), 29 U.S.C. § 1002 ("ERISA"), due to competing claims to the benefits. The interest of *amicus curiae* are set forth in the motion and accompanying brief.

STATEMENT OF THE CASE

The facts of this case are not in dispute. Bradford Wayne Galaway and Kimberlye Finch were married on September 22, 2001. On February 1, 2002, Guardian issued a group insurance policy to Bradford Wayne Galaway's employer, which provided Bradford Wayne Galaway with basic life insurance and accidental death benefits. The policy constituted an insured employee welfare benefit plan governed by ERISA.

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1. Pursuant to Supreme Court Rule 37.6, this brief has been authored in its entirety by undersigned counsel for the *amicus curiae*. No person or entity, other than the named *amicus* and its counsel, made any monetary contribution to the preparation and submission of this brief.

Bradford Wayne Galaway named his then spouse, Kimberlye Finch, as the beneficiary to the policy. On or about June 20, 2002, Bradford Wayne Galaway and Kimberlye Finch were divorced. The divorce decree divested Kimberlye Finch of all rights, title, interest, and claims in and of all policies of life insurance insuring Bradford Wayne Galaway's life.

On November 8, 2002, Bradford Wayne Galaway was killed in an airplane accident. He died intestate and had not changed the named beneficiary on the life insurance policy prior to his death. Kimberlye Finch, the named beneficiary, and Eddie Lee Galaway, the administrator of Bradford Wayne Galaway's estate, both claimed sole entitlement to the insurance proceeds.

On May 30, 2003, Guardian filed an interpleader action in the United States District Court for the Northern District of Texas, Dallas Division to resolve the competing claims to the proceeds. Subsequently, Eddie Lee Galaway and Kimberlye Finch filed competing motions for summary judgment seeking the interpled benefits under the Plan.

The District Court granted summary judgment in favor of Eddie Lee Galaway based on the Fifth Circuit's precedent of applying the federal common law to the facts of the case rather than deciding the case based on the policy's named beneficiary as the United States Supreme Court recently did in *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). In reaching its decision, the District Court held that since Kimberely Finch "explicitly, voluntarily and in good faith" waived her beneficiary status in the policy, the estate would be entitled to the proceeds.

By its decision dated December 22, 2004, the Fifth Circuit affirmed the district court's decision holding that

Kimberlye Finch waived her rights under the plan. In doing so, the Fifth Circuit concluded that application of federal common law did not undermine this Court's decision in *Egelhoff*, because *Egelhoff* is inapplicable to the present case. *Guardian Life Ins. Co. v. Finch*, 395 F.3d 238 (5th Cir. 2004). The circuit court reasoned that *Egelhoff* does not address the application of federal common law to ERISA plans. "Rather, *Egelhoff* only addresses whether ERISA preempts a state statute that automatically revokes the designation of a spouse as the beneficiary of a life insurance policy upon divorce." *Id.* at 242.

The Fifth Circuit further acknowledged that the goal of uniformity espoused by this Court in *Egelhoff* is not undermined when courts rely on the federal common law of waiver to determine if a beneficiary has waived her rights under an ERISA plan. The court reasoned that *Egelhoff* never held that uniformity would be undermined if courts relied on federal common law, because plan administrators must at times look to the federal common law when administering ERISA plans. Rejecting the assumption that reliance on federal common law would undermine national uniformity, the circuit court further surmised that the Court in *Egelhoff* strongly suggested that courts can at times rely upon common law principles when determining the identity of the beneficiary of an ERISA plan. *Id.* at 243.

The circuit court's decision continues to cast doubt on whether plan administrators are to follow the federal common law or this Court's decision in *Egelhoff* on how to determine competing claims to an ERISA plan's life insurance benefits brought by a participant's estate and that of participant's former spouse. The existing Fifth Circuit authority requires the plan administrator to examine the federal common law in making this determination. Whereas, *Egelhoff* mandates that ERISA's goal of uniform application can only be satisfied

by restricting the administrator's decision to the beneficiary designation set forth in the plan documents. It is this conflict among the Circuits that *amicus* addresses herein.

ARGUMENT

I. The Decision of the Fifth Circuit Deepens a Mature and Irreconcilable Conflict Among the Circuits and this Court's Decision in *Egelhoff v. Egelhoff* on the Administration of ERISA Plans

Guardian administers retirement and employee benefit plans, similar to the Plan at issue in this case, throughout the United States of America. These plans are typically governed by ERISA. As pronounced by the Supreme Court:

> One of the principal goals of ERISA is to enable employers 'to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits.' Uniformity is impossible, however, if plans are subject to different legal obligations in different States.

Egelhoff, 532 U.S. at 148 (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)). Notwithstanding this goal of uniformity, different jurisdictions apply different rules regarding the distribution of plan benefits to plan participants' estates and their former spouses. In cases where the entitlement to benefits is contested, Guardian is forced to interplead the plan funds to determine their proper recipient. While the outcome of each interpleader action provides a resolution as to that specific case, no uniform guidelines have emerged to assist plan administrators with determining future competing claims to plan proceeds. Hence, ERISA's purpose of providing uniformity in administration of qualifying plans has been frustrated.

The Fifth Circuit, as exemplified in *Finch*, continues to frustrate ERISA's goal of uniformity. Its decision deepens a mature and irreconcilable conflict among the circuits and is inconsistent with the application of ERISA and this Court's decision in *Egelhoff*. ERISA requires that an employee benefit plan be administered "in accordance with the documents and instruments governing the plan. . . ." 29 U.S.C. § 1104(a)(1)(D). Further, the plan "shall specify the basis on which payments are made to and from the plan." *Id.* § 1102(b)(4). Rather than enforcing the provisions of ERISA and allowing plan administrators to easily determine beneficiary status by looking to the plan documents, the Fifth Circuit simply circumvents preemption mandated by *Egelhoff* in reviving state law under the guise of "federal common law." Specifically, the Fifth Circuit's justification that *Egelhoff* is inapplicable to this case – because *Egelhoff* addresses a state statute and not federal common law – provides a distinction with no meaning since the Fifth Circuit federal common law was shaped by Texas statutory law. *Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000) (holding that courts should borrow from state law; specifically, sections 9.301 and 9.302 of the Texas Family Code[2] in determining the federal common law to apply to these types of cases). Thus, applying the federal common law provides the same result as if the state law had not been preempted at all. This result effectively renders ERISA nonsensical, as the Act requires plans to be administered to their terms, preempt state law to assure that end, and then reincorporate state law

2. Sections 9.301 and 9.302 of the Code provide that a pre-divorce decree designation of a former spouse as beneficiary of a life insurance policy is not effective unless (1) the decree designates the insured's former spouse as the beneficiary; (2) the insured redesignates the former spouse as the beneficiary after rendition of the decree; or (3) the former spouse is designated to receive the proceeds in trust for, on behalf of, or for the benefit of a child or a dependent of either former spouse. Tex. Fam. Code Ann. §§ 9.301, 9.302 (Vernon 1998).

into federal common law so that plans are not uniformly administered according to their own terms.

Not only does the interpretation of the federal common law by the Fifth Circuit, as well as the other circuits favoring the federal common law approach, render administrative provisions under ERISA illusory, but it further complicates the process of determining beneficiary status under the federal common law as no consensus among the circuits adopting this approach has been achieved. This point is illustrated by the recent decision of the Seventh Circuit in *Melton v. Melton*, 324 F.3d 941, 945 (7th Cir. 2003). *Melton* turned to the federal common law concerning waiver in determining to whom the plan administrator *should have* paid plan proceeds. The court reasoned, "when we are evaluating whether a waiver is effective in a given case, we are more concerned with whether a reasonable person would have understood that she was waiving her interest in the proceeds or benefits in question than with any magic language contained in the waiver itself." *Id.* at 945-946. This subjective approach to applying the federal common law provides no guidance to plan administrators in determining beneficiary status.

To further illustrate this point, the Fifth Circuit followed the federal common law as set forth by the Seventh and Eighth Circuit when initially determining the validity of a waiver of plan benefits. *See Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994) (citing *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897 F.2d 275 (7th Cir. 1990); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989)). Contrary to the holdings in these circuits, however, the Fifth Circuit rejected any requirement that a waiver be specific or explicitly identify the benefit that is waived. *Id.* The Fifth Circuit later refined what constitutes an effective waiver of benefits when it held that the federal common law, as influenced by state law, requires that a waiver of a

beneficiary interest be "explicit, voluntary, and made in good faith." *Manning*, 212 F.3d at 874. The guidance provided by the *Manning* court, however, has provided little assistance towards the uniform application of the federal common law.

Unfortunately, no clear guidelines have been established to assist the lower courts in what constitutes an explicit, voluntary, and good faith waiver so that the federal common law can be uniformly applied. The Fifth Circuit has merely stated that "explicit" indicates something other than silence, and "voluntary" means not coerced. *Manning*, 210 F.3d at 872. Further, the court set forth the following subjective requirement for waiver: "We will only find waiver if, upon a reading of the language in the divorce decree, a reasonable person would have understood that she was waiving her beneficial interest in the life insurance policy at issue." *Clift v. Clift*, 210 F.3d 268, 269 (5th Cir. 2000), citing *Brandon*, 18 F.3d at 1326. As such, the Fifth Circuit has created yet another ambiguous test, thereby perpetuating the inconsistencies in the federal common law. *See, e.g., Fox Valley*, 897 F.2d at 275 (specificity is required); *Estate of Altobelli v. IBM*, 77 F.3d 78 (4th Cir. 1996) (the divorce decree must include a specific waiver of benefits); *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir. 1995) (the analysis is fact driven); *Metro. Life Ins. Co. v. Flinkstrom*, 303 F. Supp. 2d 34 (D. Mass. 2004) (specific intent is required); *Estate of Zienowicz v. Metro. Life Ins. Co.*, 205 F. Supp. 2d 339 (D.N.J. 2002) (agreements must identify the benefit being waived).

Contrary to this Court's recent decision in *Egelhoff*, these subjective approaches to translating the federal common law require plan administrators to disregard plan documents and circumnavigate the legal waters of fifty states and divorce litigation within those states. "It would be an overwhelming burden to require plan administrators to decipher divorce

judgments to determine if an effective waiver had occurred as opposed to simply examining plan documents for the named beneficiary. Having to file interpleader actions, where multiple parties are making claims to plan proceeds would also be burdensome to plan administrators." *See MacInnes v. MacInnes*, 677 N.W.2d 889 (Mich. App. 2004).

In fact, not only would it be burdensome to require this of a plan administrator, but it may be an impossible task as the law is not only unsettled between the circuits, but within the district courts, as well as the state courts. The Fourth, Fifth, Seventh, and Eighth Circuits have adopted federal common law approaches. *See Estate of Altobelli*, 77 F.3d at 81-82 (4th Cir. 1996); *Lyman Lumber Co. v. Hill*, 877 F.2d at 693-94; *Melton*, 324 F.3d at 945-46. However, of those Circuits, only the Fifth and Seventh have reaffirmed that approach since *Egelhoff*. *See Melton*, 324 F.3d at 941; *Guardian Life Ins. Co.*, 395 F.3d at 238. The Sixth Circuit and at least one district court in the Third Circuit hold that a clear beneficiary designation in plan documents or instruments cannot be disturbed by a waiver in external documents. *Central States, Southeast & Southwest Areas Pension Fund v. Howell*, 227 F.3d 672, 676-77 (6th Cir. 2000); *Estate of Zienowicz*, 205 F. Supp. 2d at 343-44. Another case in the Third Circuit came to the opposite conclusion before *Egelhoff* was decided. *John Hancock Mut. Life Ins. Co. v. Timbo*, 67 F. Supp. 2d 339, 343-44 (D. N.J. 2002). Additionally, a conflict may also exist in the state courts, as state courts are only bound by precedent from their own courts and this Court. *See* Note: *Egelhoff v. Egelhoff: The Supreme Court's Latest Attempt to Clarify ERISA Preemption and the Decision's Effect on Texas State Law*, 54 Baylor L. Rev. 503, 527-30 (2002); *see also MacInnes*, 677 N.W.2d at 892 n.3.

This lack of uniformity is contrary to one of the core purposes of ERISA, to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing claims and disbursing benefits. *Egelhoff*, 532 U.S. 148 (2001) (quoting *Fort Halifax Packing Co.*, 482 U.S. at 9). In *Manning*, the Fifth Circuit stated: "While we can certainly appreciate the simplicity of the bright line rule embraced by the Sixth Circuit, that simplicity comes at too great a cost." 212 F.3d at 872. Yet, it is clear that the differences in how the federal common law is applied within the majority circuits alone will necessarily create significant confusion in the courts. Without one single, simple, and objective standard, plan administrators cannot promptly pay benefits, but must undertake a subjective legal analysis of the law within the applicable jurisdiction (often retaining counsel), without any assurance that a decision to pay will not result in double liability. The choice being, then, to take the risk of paying the benefit twice or interpleading adverse claimants. The only solution is for this Court to hold that ERISA plans must pay benefits in accordance with plan documents as set forth in the Act. 29 U.S.C. § 1104(a)(1)(D).

II. Certiorari is Warranted because Resolution of the Conflict in the Lower Courts Over the Question Presented is Vital to the Orderly Administration of ERISA Plans

This Court has long recognized the host of obligations and responsibilities associated with plan administration. *E.g.*, *Fort Halifax Packing Co.*, 482 U.S. at 9 (plan administrators must determine the eligibility of claimants, calculate benefit levels, make disbursements, monitor the availability of funds for benefit payments, and keep appropriate records in order to comply with applicable reporting requirements). Plan administration is unnecessarily

further complicated when administrators are required to fulfill these obligations and responsibilities in many different States, all potentially subject to varying laws. "Given the vast number of tasks a plan administrator must perform, Congress believed '[t]he most efficient way to meet these responsibilities [was] to establish a uniform administrative scheme, which provide[d] a set of standard procedures to guide processing of claims and disbursement of benefits.'" George A. Norwood, *Who is Entitled to Receive a Deceased Participant's ERISA Retirement Plan Benefits–an Ex-Spouse or Current Spouse? The Federal Circuits Have an Irreconcilable Conflict*, 33 Gonz. L. Rev. 61, 81 (1998) (*citing Fort Halifax Packing Co.*, 482 U.S. at 9).

Moreover, it was Congress' intent in enacting ERISA to simplify an already chaotic system subject to multi-jurisdictional standards by "bring[ing] a measure of uniformity in an area where decisions under the same set of facts may differ from state to state." H.R. Rep. No. 93-533, p. 12 (1973). Creating this uniformity was among the primary goals for the Act. *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990) (Congress intended "ERISA plans to be uniform in their interpretation and simple in their application.") (citing H.R. Rep. No. 93-533 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650). More than thirty years after ERISA's enactment, however, Congress' goal of uniformity and simplicity in plan administration has not been realized.

Despite the federal scope of the legislation, the administration of plans subject to ERISA has not been uniform across the country, as the rules that plan administrators are required to follow in identifying plan beneficiaries are neither easily discerned nor simply applied. The current split in the circuits requires plan administrators to strictly adhere to plan documents in a minority of

jurisdictions in making this determination and, in the remaining states, attempt to follow the nebulous federal common law, as influenced by pre-empted state law. When plan administrators attempting to identify plan beneficiaries are forced to look beyond the plan documents and analyze divorce decrees, various state statutes, state case law interpreting the statutes and decrees, and the federal common law, uniformity cannot be achieved. "Uniformity is impossible . . . if plans are subject to different legal obligations in different States." *Egelhoff*, 532 U.S. at 148. When uniformity is compromised, plan participants, plan administrators, and the courts pay the price.

Plan participants benefit from a uniform administrative system because uniformity furthers another fundamental goal of ERISA – it enables plan participants to easily learn their rights and obligations under their plan at any given time. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995). In *Schoonejongen*, this Court reasoned that plan participants can quickly determine their rights and obligations under their ERISA plan because ERISA is based on an "elaborate scheme" that is "built around reliance on the face of written plan documents." *Id.* This reliance is misplaced if plan participants reside in jurisdictions that follow the majority approach requiring plan administrators to analyze a participant's rights and benefits based on the vagaries of the federal common law, rather than the plan documents themselves.

Plan participants (and many plan administrators) are unaware of how the federal common law operates and how it can significantly impact ERISA plan benefits. It is reasonable to conclude that plan participants expect their entitlement to benefits to remain the same regardless of the state in which they reside. While the reasonableness of this expectation is manifest, it reflects a lack of understanding

regarding the current conflict in this area of the law. As a result of the split in the circuits, a plan participant can not be *certain* of his rights and obligations under an ERISA plan until a court analyzes the plan and the law, makes the determination by court order, and the order becomes final. Conversely, plan participants could easily determine their rights and obligations under an ERISA plan quickly and without reliance on legal counsel or judicial interpretation if those rights and obligations were defined by the plan documents themselves. Adopting this approach, as the Sixth Circuit has, would not only enable a plan participant to easily determine his benefits, but would promote Congress' fundamental goal that ERISA plans be efficiently and uniformly administered.

Because the circuits are deeply divided regarding whether plan documents or federal common law (as shaped by pre-empted state law) should determine beneficiary status under an ERISA plan, plan administrators are heavily burdened by the necessity to administer plans differently depending upon the state in which a participant resides. "Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimizing the administrative and financial burdens' on plan administrators – burdens ultimately borne by the beneficiaries." *Egelhoff*, 532 U.S. at 149-50 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 142 (1990)). Since it is often unclear as to how benefits should be distributed under the federal common law approach, "the potential for double liability if the plan administrator inadvertently, but in good faith, pays the incorrect beneficiary" is quite high. Norwood, *supra*, 33 Gonz. L. Rev. at 80. If it is determined that a plan administrator misconstrued the federal common law and paid benefits to the wrong party, "the plan administrator must pay the correct

beneficiary and, at the same time, recover payment from the incorrect beneficiary, further miring the plan and its assets in legal costs.[3]" *Id.*

Since a uniform system for determining beneficiary status under an ERISA plan has not been adopted, contrary to Congress' stated intentions, plan administrators are forced to retain the services of legal counsel to assist with plan administration. However, "given the uncertainty in this area of the law, it is less than prudent for counsel to provide an unqualified opinion as to the proper beneficiary, unless the facts or property settlement agreement [in the divorce decree] are in direct alignment with recent circuit precedent." Norwood, *supra*, 33 Gonz. L. Rev. at 79. To minimize the potential for double liability, plan administrators and their counsel often resort to filing interpleader actions and depositing the plan proceeds with an already overburdened court to resolve the entitlement dispute.[4] Previously, the Court expressed its concern with this problem and noted that the filing of interpleader actions to resolve these disputes "presents an example of how the costs of delay and uncertainty can be passed on to beneficiaries, thereby thwarting ERISA's objective of efficient plan administration." *Egelhoff*, 532 U.S. at 150 n.3 (*citing Fort Halifax Packing Co.*, 482 U.S. at 9).

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3. *Amicus* directs the Court to *Kennedy v. E.I. Dupont De Nemours and Co.*, Civil Action No. 1:01-CV-904, in the United States District Court for the Eastern District of Texas Beaumont Division, in which the plan administrator, Dupont, paid the benefits of an ERISA plan according to the plan documents. The court in that case held that Dupont wrongly paid the benefits, that Dupont was liable to the proper beneficiary for these benefits, and that Dupont was not entitled to restitution.

4. *See* Appendix for a survey of recent interpleader actions filed by plan administrators.

Unfortunately, filing interpleader actions is often the only way to ensure that the proper beneficiaries are paid in a particular case, thereby eliminating a plan administrator's exposure to double liability, but adding to the overall cost and burden of administering the plan. Moreover, because of the fact-specific nature of the determination of such actions and the differing federal common law as applied by the various circuits, the resulting decisions lack significant precedential value. Thus, even though many such interpleaders have been filed, the decisions of lower courts have not and will not generate a clear and uniform rule for plan administrators to follow. Only a decision by this Court resolving the conflict among the circuits will implement the congressional intent to have a uniform system of plan administration under ERISA.

The burden on plan participants resulting from the present uncertainty is of paramount importance. As the Court reasoned in *Egelhoff*, plan administrators and the courts are not the only parties burdened by the filing of interpleader actions; these court proceedings significantly add to the delay beneficiaries experience while awaiting the benefits to which they are entitled. *Id.* As an example, the still-unresolved final disposition of the ERISA plan proceeds in this case has been argued in the courts for almost two years. Surely, the state of today's administrative scheme and the practical effect that it has on plan administrators, plan participants, and the courts is not what Congress had in mind when it contemplated uniform administration of plans and benefits and simple application of administrative procedures.

The only way that the Court can ensure that Congress' goals of uniformity and simplicity in plan administration are achieved is to adopt the minority rule among the circuits and rule that the plan documents themselves control beneficiary status. If plan administrators are no longer required to analyze

extraneous documents and interpret the ever-changing federal common law, beneficiary status would be determined quickly and accurately without legal guidance and proceeds disbursed to plan beneficiaries in a timely fashion. If plan administrators are no longer required to retain counsel to assist with plan administration, it will significantly conserve both plan and judicial resources. Specifically, plan administrators will no longer be forced to incur such significant legal costs in administering benefits to their plan participants, reducing a primary cost factor that leads to increasing premiums. Moreover, fewer interpleader actions filed with the courts will conserve the resources of an already overburdened judicial system.

Additionally, and most significantly, plan participants will be able to easily determine their rights and obligations under their plan solely by reviewing the plan documents. In essence, the aspirational statement that "[a] participant is master of his own ERISA plan" will become a reality. *See McMillan*, 913 F.2d at 312. As a true master of his plan, the participant will be able to review his beneficiary designations, change those designations if he wishes, and know that his intentions as expressed in the beneficiary designation form in his plan documents will be followed by the plan administrator. Plan administrators would no longer be required to disregard a participant's last known wishes for the beneficiaries under a particular ERISA plan or guess, between two or more competing claims, which should be honored. If the Court holds that plan documents are the only consideration in identifying beneficiaries under an ERISA plan, this issue will be resolved once and for all.

CONCLUSION

The division among the circuit courts is long standing and acknowledged by the courts themselves. Amidst this confusion among the courts, the concerns of upholding uniform administrative schemes that were espoused in *Egelhoff* have not been addressed. Accordingly, the contrary views of the circuit courts concerning the application of federal common law or whether plan documents themselves should govern when determining competing claims to benefits warrant review by this Court to resolve the conflict. For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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